

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEON PERCIVAL, SR.,

Petitioner,

v.

CASE NO. 2:07-10748  
HONORABLE DENISE PAGE HOOD

DAVID BERGH,

Respondent.

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**ORDER DISMISSING HABEAS CORPUS PETITION**

Petitioner Leon Percival, Sr., has filed a *pro se* application for writ of habeas corpus under 28 U.S.C. § 2254. The habeas petition challenges Petitioner's 1991 conviction for second-degree murder, for which Petitioner is serving a sentence of twenty-five to forty years.

Petitioner challenged the same conviction in a prior habeas corpus petition. United States District Judge Julian Abele Cook, Jr., denied the exhausted claims on the merits, and Petitioner waived review of the unexhausted claims. *See Percival v. Stine*, No. 96-72246 (E. D. Mich. May 30, 1997) (Cook, J.). The United States Court of Appeals for the Sixth Circuit denied Petitioner's subsequent motion for a certificate of appealability. *See Percival v. Stine*, No. 97-1727 (6th Cir. Dec. 18, 1997).

Petitioner filed another habeas corpus petition in the year 2000. The petition challenged a 1986 conviction, which was used to enhance Petitioner's sentence for his 1991 murder conviction. United States District Judge Victoria A. Roberts transferred the petition to the Sixth Circuit Court of Appeals as a second or successive petition. *See Percival v. Tyszkiewicz*, No. 00-71678 (E.D. Mich. Jan. 10, 2001). The Court of Appeals dismissed the appellate case for want

of prosecution. *See In re Percival*, No. 01-1092 (6th Cir. Feb. 20, 2001).

On April 10, 2006, Petitioner sought permission from the Court of Appeals to file a second or successive habeas petition challenging his murder conviction. The Court of Appeals denied his request last October. *See In re Percival*, No. 06-1485 (6th Cir. Oct. 31, 2006).

Petitioner filed the pending habeas petition on February 21, 2007. He alleges that he could not have raised his claims in a prior petition. However, nothing in the habeas petition or attached exhibits indicate that circumstances have changed since the Court of Appeals denied leave to file a second or successive petition. This Court has no jurisdiction to consider the merits of a second or successive habeas corpus petition unless the Sixth Circuit Court of Appeals authorizes the Court to consider the petition. 28 U.S.C. § 2244(b)(3); *In re King*, 190 F.3d 479, 481-82 (6th Cir. 1999). Accordingly, the habeas petition is DISMISSED without prejudice.

s/ DENISE PAGE HOOD

DENISE PAGE HOOD

UNITED STATES DISTRICT JUDGE

Dated: March 20, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 20, 2007, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager